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the trustees of the testator re-entered under the agreement, and the contract was not enforced. The court held that the giving of notice effected a conversion of the property once for all. Though sustained by English authority, this case really rests on two totally inconsistent theories. The only logical basis for the decision in *Lawes v. Bennett* is that the rights of the heir and executor depend on the carrying out of the contract.¹³ On this theory, of course, the exercise of the reserved right of rescission in *In re Blake* would have precluded any conversion. On the other hand, the line of cases upholding strictly the fiction of equitable conversion¹⁴ makes enforceability at death the decisive criterion, a theory which would negative conversion after death by the exercise of an option as well as by rescission. The unmaking of a contract should have the same effect as the making of it to change the nature of the property.

SEDITIONS LIBEL.—Seditious libels and seditious words have been prosecuted criminally since very early times.¹ The early cases, however, are of little value as legal precedents because, with the rise of popular government, public opinion on the subject of freedom of expression has brought about an attitude far more liberal than the one which formerly prevailed.² A seditious libel, as the offense was known during the eighteenth century and up to the passage of Fox's Libel Act,³ was a "written censure upon public men for their conduct as such or upon the laws or upon the institutions of the country."⁴ The truth of the utterance afforded no defense,⁵ and generally the only function of the jury in such cases was to determine whether there was a publication as charged.⁶ What specific publications were libelous, however, was a question of law,⁷ a rule which became very unpopular⁸ since the court could determine which writers on political subjects were criminal. The opposition reached its height in the *Trial of the Dean*

¹³See note 9, *supra*.

¹⁴See cases cited in note 10, *supra*.

¹See 2 Stephen, *History of the Criminal Law of England*, 301. There seems to be no such offense as sedition at common law. *Regina v. Burns* (1886) 16 Cox C. C. 355, 361; see 2 Stephen, *op. cit.* 298. Seditious libel differs from seditious words in that the former is a written and the latter a spoken publication.

²Many of the early cases of seditious libel are marked with political influence, *e. g.* *Trial of the Seven Bishops* (1688) 11 St. Tr. 1339, in which most of the argument was concerned with the dispensing power of the King. Moreover, in more arbitrary times publications which at common law would have been considered seditious libels were made treason by statute. See Stephen, *op. cit.* c. xxiii. These statutes "exercised little or no permanent influence on our law". 2 Stephen, *op. cit.* 262.

³32 Geo. III c. 60 (1792).

⁴2 Stephen, *op. cit.* 348.

⁵See 2 Stephen, *op. cit.* 307, 381.

⁶*Trial of Francklin* (1731) 17 St. Tr. 626, 667 n.

⁷*Trial of Miller* (1770) 20 St. Tr. 870, 893, 894; *Trial of Woodfall* (1770) 20 St. Tr. 895, 918.

⁸In at least one case the jury nullified this power of the court by returning a verdict of not guilty of publication. *Trial of Wm. Owen* (1752) 18 St. Tr. 1203, 1228, 1229.

of *St. Asaph*⁹ where the indictment was brought for a publication which attacked as unfair the representation of the people in the British Parliament. Counsel for the defendant urged that, as in other crimes, specific intent must be proved to obtain a conviction, that intent was a question of fact, and that therefore the jury should determine whether the matter was libelous. The judges, however, in denying a motion for a new trial, rejected the defendant's contention, though, in granting a motion in arrest of judgment, they agreed that the article was not libelous. Their position was theoretically sound, for, while specific intention is necessary to complete the crime, the defendant need not intend to offend against the law, but merely to do an act which as a matter of law is criminal.

The general attitude of the court, however correct legally, was undoubtedly hostile to genuine freedom of expression,¹⁰ and the holding in *Rex v. Shipley*¹¹ was followed nine years later by Fox's Libel Act.¹² Its principal provision was that in cases of libel the jury should render "a general verdict upon the whole matter put in issue". While in its preamble the Act seemed simply an expression of the common law, it really worked a fundamental change by making the jury judges of both law and fact¹³ and by adding seditious intention as an element of the crime.¹⁴ Seditious intention has been defined as an intention to bring into hatred or contempt the king or any branch of the established government or to excite disaffection or class antagonism in the country.¹⁵ In determining intention the courts apply the familiar rule that *prima facie* every man must be taken to intend the natural consequences of his acts under the circumstances.¹⁶ The modern crime then consists in publishing seditious matter with a seditious intention.¹⁷ Truth plays no part for, though by Lord Camp-

⁹*Rex v. Shipley* (1783) 21 St. Tr. 847.

¹⁰2 Stephen, *op. cit.* 348, 349.

¹¹See note 9, *supra*.

¹²See note 3, *supra*.

¹³*Regina v. Lovett* (1839) 9 Car. & P. 462, 466; *Regina v. Sullivan* (1868) 11 Cox C. C. 44, 52.

¹⁴*Rex v. Lambert & Perry* (1810) 2 Camp. 398, 404; *Regina v. M'Hugh* (1901) 2 Ir. R. 569; 2 Stephen, *op. cit.* 359; 9 Halsbury, Laws of England, 460. *Contra*, *Rex v. Aldred* (1909) 22 Cox C. C. 1, 3; 13 Encyc. Laws of England (2nd ed.) 210. Lord Kenyon is quoted as having said that a man might publish whatever a jury of his countrymen thought not blameable. See *Regina v. Sullivan*, *supra*, 50. This change in the law applies also to seditious words. *Regina v. Burns*, *supra*, 361.

¹⁵For a more complete definition see Stephen, Digest Criminal Law, Art. 93, approved in *Regina v. M'Hugh*, *supra*, 578 and *Regina v. Burns*, *supra*, 360.

¹⁶*Regina v. Burns*, *supra*, 365; *Regina v. Sullivan*, *supra*, 58; see Stephen, Digest Criminal Law, Art. 94.

¹⁷*Rex v. Lambert & Perry*, *supra*, 401; *Regina v. Lovett*, *supra*, 466; *Regina v. Sullivan*, *supra*, 52; Stephen, in his Digest Criminal Law, Art. 91 says: "Every one permits a misdemeanor who publishes verbally or otherwise any word or any document with a seditious intention". This statement was approved in *Regina v. Burns*, *supra*, 359, but it seems objectionable, since it makes any utterance criminal if made with seditious intention. A defamatory libel against the King is indictable without regard to

bell's Act¹⁸ the truth of a publication made in the interests of public good is a defense to a prosecution for defamatory libel, these provisions do not protect seditious utterances.¹⁹

The law of seditious libel has been unimportant in America and there have been very few prosecutions.²⁰ It was in proceedings with regard to an indictment for publishing a seditious libel on the President of the United States that the Supreme Court decided that the federal courts have no jurisdiction over common law crimes.²¹ The only federal cases, indeed, arose under the Alien and Sedition Law²² which provided that the utterance was not criminal unless made with an intent to defame.²³ This law was designed to meet a special emergency and there is no such federal statute to-day.²⁴ The states have had little occasion to prosecute this offense. There is, however, one instance where a prosecution for the common law crime was instituted as the result of the publication of an attack on democratic government as established in this country. The court charged that the words should be given their natural meaning and that to convict the jury would have to find that the publication was "seditiously, maliciously, and wilfully aimed" at the United States or at the Constitution of the United States or of the state.²⁵

In the recent case of *Rez v. Giesinger* (Sask. 1916) 32 D. L. R. 325, the Supreme Court of Saskatchewan considered the question of intent in a prosecution for seditious libel. The defendant wrote a letter which referred in disparaging terms to the Canadian troops and sent it to a newspaper printed in the United States knowing that it would cir-

its seditious nature. *Rex v. Mylius* (1911) *The Times* (London) February 2nd, 1911. A publication exciting sedition against a foreign king or government is criminal, though not a seditious libel. *Rex v. Antonelli* (1905) 70 J. P. 4.

¹⁸6 & 7 Vict. c. 96 (1843).

¹⁹*Queen v. Duffy* (1846) 9 Ir. L. R. (3rd. series) 329. 44 & 45 Vict. c. 60 § 4 (1881) provides that the court may, on hearing the charge in a prosecution against a newspaper for libel, dismiss it if it is believed that the statement was true and made without malice. But this has been held not to apply to prosecutions for seditious utterances. *Ex parte O'Brien* (1883) 12 L. R. (Ir.) 29, 33. 51 & 52 Vict. c. 64 § 4 (1888) allows a fair and accurate account of all public meetings to be published if the publication is made without malice. This statute likewise is inapplicable to cases of seditious libel. *Regina v. M'Hugh*, *supra*, 580, 582.

²⁰1 Bishop, *New Criminal Law* (8th ed.) § 457, sec. 3.

²¹*United States v. Hudson* (1812) 11 U. S. 32.

²²1 Stat. 596 (1798). This law expired in accordance with its own terms in 1801.

²³*United States v. Callender* (C. C. 1800) 25 Fed. Cas. No. 14709.

²⁴It is, however, a crime for any one whether he owes allegiance to the United States or not to incite to insurrection. 10 U. S. Comp. Stat. (1916) § 10168. In his proclamation of April 6th, 1917, made pursuant to the authority vested in him by 7 U. S. Comp. Stat. (1916) §§ 7615, 7616, 7617, 7618, the President of the United States forbade alien enemies from writing, printing or publishing any attack against the United States or any branch of the government.

²⁵*Respublica v. Dennie* (Pa. 1805) 4 Yeates 267. The defendant was acquitted.

culate in Canada. Under the Criminal Code of the province²⁶ a seditious libel is a libel expressive of seditious intention. Consequently, on an appeal from a conviction, after the lower court had refused to charge that an intention to stir up disaffection must be found to convict, the Supreme Court very properly ordered a new trial on the ground that the jury had made no finding on the question of intention. The Code provision and the decision are both in harmony with the view indicated above.

²⁶Crim. Code Sask. § 132.